Supreme Court of the United States

OCTOBER TERM, 1943

NO.

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

BRIEF.

In Support of the foregoing Petition for a Writ of Certiorari.

The subject index will be found preceding the petition for certiorari.

I.

The Report of the Decision Below.

The opinion below is reported as *Garlington* v. *Wasson*, 139 Fed. (2d) 183. In the record it appears at R. 90.

In the district court no opinion was rendered. The final order is found at R. 49 to 50.

II.

Grounds on Which the Jurisdiction of This Court Is Invoked.

The basis for the jurisdiction of this court has been stated at page 4 of the preceding petition for certiorari.

III.

A Statement of the Case.

It is believed that the following schedule of the procedure in the case is a sufficient statement of it.

July 26, 1939 R. 1 to 20. Petition filed under Section 75 (a) to (r) for composition or extension and referred to a conciliation commissioner. R. 1 to 20.

October 25, 1939 R. 20 to 21, R. 21 to 39. On report of no conciliation a conditional order of dismissal was entered, **saving the right to file an amended petition** pursuant to Section 75 (s). R. 20 to 21.

An amended petition under Section 75 (s) was filed on the same day. R. 21 to 39. The filing date is found at R. 39.

January 22, 1943 R. 75 and 76. Order entered (dated January 14, 1943 and subsequently referred to as "the order of January 14, 1943"), apparently on the court's own initiative. It begins: "On this, the 14th day of January, A.D. 1943, the court reviewed the entire file."

Finding:

1. The case was filed July 26, 1939;

2. No composition or extension was effected;

3. **"No amended petition has been filed in this cause;"**

(This finding is contrary to the court's own record. R. 21 to 39, filing date at R. 39.)

4. "More than 90 days have elapsed since the first creditors' meeting;" (referring to G.O. 50(4))

5. A certain Section 11 of land should be abandoned;

6. "The farm debtor is granted permission to seek the benefits of Subsection (s), Section 203, Title 11, U.S.C.A., provided his amended petition is filed before the 1st day of February, 1943;"

And Ordering:

(After abandoning the Section 11 of land),

> **"It is Further Ordered, Adjudged, and Decreed by the court that this proceeding should be and the same is here and now in all things dismissed. However the farm debtor may seek the benefits of Subsection (s) of Section 203, Title 11, U. S. C. A. if he so elects and if he files his petition by the first day of February 1943."**

This is the order sometimes referred to in the record as "the order of January 14, 1943." It is at R. 75 and 76.

February 1, 1943 R. 47 to 49. This second amended petition under Section 75 (s) was filed without abandoning their amended petition already pending. R. 47 to 49. This petition contained the following statement:

> "They further say that on October 6th, 1939, they submitted to the Conciliation Commissioner appointed by this Court **their amended petition** under Section 75, Subsection (s), **which was filed in this Court on Oct. 25, 1939, but by his order dated January 14th, 1943, the Judge of this court found and held that no amended petition was filed herein and therefore out of caution this amended petition is filed** in compliance with the said order of January 14th, 1943, that such an amended petition under said Section 75, Subsection (s), be filed by Feb. 1, 1943, **nor is former amended petition under said Section 75 (s) withdrawn.**"

March 5, 1943 R. 49 to 50. On this date the final order was entered which was appealed. It denied the right to file an amended petition and recited that the case had theretofore been dismissed. It is at R. 49 and 50. This order reads as follows:

> "On this 2 day of March, 1943, it is Ordered that the Debtor, J. S. Garlington, **be denied the right to file his Amended Petition** in Bankruptcy, and that **such petition, having been presented to the Clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had herein.**
>
> The court finds, among other facts, that the Debtor has not heretofore prosecuted his case as required by law and General Order No. 50, Subdivision 4, and that this proceeding was instituted more than three years prior to the date of this order, and more than three years prior to the filing of the Amended Petition." Although this entry refers to the petitioners in the singular, all papers filed and all actions taken in the case pertained to "J. S. Garlington and Jennie Lou Garlington."

The appeal, R. 50, the decision and order below R. 90 to 93, and the petition for certiorari stem from this final order.

December 9, 1943 R. 90 to 93. The opinion of the appellate court held:

> "The filing of the first amended petition was timely, and a matter of right. *John Hancock Co.* v. *Bartels*, 308 U.S. 180. But the farmer debtors were not automatically entitled to the benefits of the Subsection (s). They ought to have brought the amendment to the attention of the judge, or of the conciliation commissioner who acts as referee in bankruptcy under Section (s) (4), so that they might be adjudged bankrupts and the machinery of Subsection (s) be put into action. This amended petition did not pray for an appraisal of the property and the setting aside of any to be possessed by the bankrupts under the supervision of the court. It does not appear that such a request was ever made. Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or at the first meeting of creditors. Since there was no adjudication,we presume there was no meeting of creditors. Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Subsection (s) have been substantially enjoyed, except as touching Wasson and his land. General Order 50 (4) does not appear to be involved, but we think the judge was warranted in holding that the amended petition, never having been even prosecuted to an adjudication, was not prosecuted according

to law, but was abandoned, and ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land." R. 91 to 92, the paragraph beginning at the bottom of R. 91 and ending at the middle of R. 92.

IV.

Specification of Errors.

1.

The appellate court below erred in holding that the farmer debtors "were not automatically entitled to the benefits of Subsection (s)" upon the filing of their amended petition under Section 75 (s), first unnumbered paragraph. That paragraph provides that a farmer debtor "may amend his petition . . . asking to be adjudged a bankrupt." Their amended petition, filed on October 25, 1939, expressly prayed that they "be adjudged by the court to be a bankrupt." R. 21, at R. 22, last paragraph. Holding of appellate court, R. 90 at R. 91, bottom of page.

2.

The appellate court below erred in holding that the farmer debtors should have "brought the amendment to the attention of the judge, or of the conciliation commissioner," referring to their said amended petition filed October 25, 1939, under Section 75 (s). Such holding was erroneous because they duly filed their amended petition pursuant to statute, and in compliance with the court's order, and therein they prayed the court to adjudicate them

bankrupt; and further such holding was erroneous because the court never entered any adjudication and never referred the amended petition to a conciliation commissioner.

3.

The appellate court erred in inferentially holding that prior to the first creditors' meeting subsequent to the filing of their amended petition under Section 75 (s) they were required to request an appraisal of their property and to request possession for three years. Such holding is erroneous because it conflicts with Section 75 (s), first unnumbered paragraph, which provides for such a request to be made at the time of such first hearing. Opinion of the appellate court: R. 92, top of page.

4.

The appellate court erred in holding that because there was no adjudication and no reference to a conciliation commissioner and therefore no creditors' meeting at which a request for appraisal, stay and possession could be made, as provided by statute, nevertheless the farmer debtors should have asked in their amended petition for such an order in anticipation of the failure of the bankruptcy court to perform that court's duty. Opinion of the appellate court, R. 92, first half of page.

5.

The appellate court erred in holding in relation to the state of this case that "It seems that the benefits of sub-

section (s) have been substantially enjoyed'' by the farmer debtors, in the face of the fact that no adjudication was ever entered and no proceeding ever had under subsection (s). Opinion of the appellate court, R. 92, middle of the page.

6.

The appellate court erred in holding that because no adjudication was ever entered by the court, therefore the farmer debtors failed to prosecute their case but abandoned it, whereas the court itself failed to administer the act by failing to take any step whatsoever as prescribed by statute.

7.

The bankruptcy court could not deny to the farmer debtors the right to file their amended petition under Section 75 (s) after they failed to achieve composition or extension under Section 75 (a) to (r).

8.

The bankruptcy court could not dismiss the farmer debtor proceeding while they had on file their amended petition under Section 75 (s).

9.

The bankruptcy court, as shown by its own record erred in finding in its order of January 14, 1943, that no amended petition had been filed prior to January 14, 1943.

10.

The bankruptcy court erred in making a finding in its order of January 14, 1943, that more than ninety days had elapsed after the date of the first creditors' meeting for the reason that such finding was irrelevant. There is no ninety day provision relating to the filing of an amended petition under Section 75 (s) where no composition or extension has been attained under Section 75 (a) to (r).

The making of such a finding was erroneous also because the court's own record showed that the amended petition was filed on October 25, 1939, less than ninety days from any creditors' meeting that could have been held pursuant to the order of reference on July 26, 1939 in view of the recital in the court's own order at the top of R. 21 showing that the statutory steps had been taken within a total of niney-one days from the order of reference and the filing of the amended petition.

It was erroneous also because said amended petition was filed pursuant to the court's own order entered October 25, 1939, at the top of R. 21 and on the same day that that order was entered, October 25, 1939.

11.

The bankruptcy court erred in its order of March 5, 1943, in denying to the petitioners the right to file their amended petition whether the "amended petition" referred to was the first one which was filed on October 25, 1939, (R. 21 to 39) or the second one filed February 1,

1943 (R. 47 to 49). The first one was filed pursuant to explicit statutory authority in the first unnumbered paragraph of Section 75 (s) and also it was filed pursuant to the express order of the court entered on the same day, October 25, 1939. R. 21. R. 21 to 29. File date of amended petition: R. 39. The second one was filed on February 1, 1943, pursuant to another express order of the court. Order: R. 75, at the top of R. 76. Amended petition: R. 47 to 49. Filing date of that amended petition: R. 49.

12.

The bankruptcy court erred in its order of dismissal entered March 5, 1943, in holding that the case had already been dismissed. It was error because the order of that court of January 14, 1943, which was entered January 22, 1943, (R. 75 to 76), explicitly made such dismissal subject to the right to file an amended petition under Section 75 (s). R. 76, top of page.

13.

The bankruptcy court erred in its order of March 5, 1943, in ordering that no further proceeding be had in the case. R. 49, first paragraph at foot of page.

14.

The bankruptcy court erred in its order of March 5, 1943, in finding that the farmer debtors had not prosecuted their

case pursuant to General Order No. 50, Subdivision 4. That General Order is not applicable where no composition or extension has been accepted.

15.

The bankruptcy court erred in finding in its order of March 5, 1943, that the case was instituted more than three years prior to the filing of the amended petition because the court's own record shows that the case was instituted on July 26, 1939 (R. 1 to 19, filing date at R. 19) and the amended petition was filed less than three months thereafter on October 25, 1939. R. 21 to 39, filing date at R. 39.

V.

Summary of the Argument.

It is the elementary statutory right of a farmer debtor to have his case administered by the bankruptcy court when he files his amended petition under Section 75 (s). The decisions below have denied that right.

VI.

ARGUMENT.

The situation in *Wright* v. *Logan*, 1941, 315 U.S. 139, is essentially not unlike that in this Garlington case. As stated in the opinion in that case it was this:

Pages 140 and 141:

> ". . . the petitioners filed an amendment alleging this failure to obtain composition or extension under Section 75 (a) to (r), and asking that the court adjudicate them bankrupt under 75 (s), which provides: 'Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal . . . may amend his petition or answer asking to be adjudged a bankrupt.'
>
> Although the petitioners' allegations brought them squarely within the language of 75 (s), the District Court ordered that the amended petition be denied; that the proceeding be dismissed; that the mortgagee's successors in interest be permitted to exercise rights as owners under the foreclosure; that the deed issued to the mortgagee by the state master in chancery after the bankruptcy proceedings had begun be given full force and effect; and that possession of the forty acres be surrendered to the respondent. The Circuit Court of Appeals affirmed, 119 Fed. 2d 354, holding that 75 imposes upon farmer debtors duties corresponding to the privileges conferred; that if a farmer debtor fails to prosecute his composition proceedings to a conclusion within a reasonable time, the court can deny him the privilege of adjudication under 75 (s); and that

> although these farmer debtors had filed under other subsections of 75 they had already enjoyed all the benefits to which they would have been entitled under 75 (s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition."

Although the bankruptcy court in *Wright* v. *Logan* had kept the proceeding before it for five years, from 1935 to 1940, this court held that it could not decline to administer the case fully under the statute.

The simple fact is that the Garlington farmer debtors on October 25, 1939, carefully complied with both the statute and the order of the court, entered the same day, by filing their amended petition praying for adjudication as farmer debtor bankrupts and for the benefits of Section 75 (s). R. 21 to 23. For the filing date see R. 39. For the court order in compliance with which it was filed see R. 20 to 21. For the statutory provision see the first sentence of Section 75 (s).

But the bankruptcy court occupied itself with other procedure, and neglected the administration prescribed by the statute. No adjudication was made and no order of reference was entered. The only notice it took of the amended petition was the so-called "Order of January 14, 1943," actually entered January 22, 1943, which declared that it had never been filed. R. 75, paragraph numbered (3). And to tempt the farmer debtors to abandon it and file another. R. 75, paragraph (6). R. 76, top of page.

Of course the practical result of such an abandonment would have been that the status quo of the estate as it existed upon the filing of their amended petition invoking Section 75 (s) would have been destroyed.

Out of deference to the order with its deadline of "the first day of February, 1943" (R. 76, top of page) but expressly adhering to their amended petition already filed, they filed another on that date. R. 47 to 49. Their reference to their original amended petition is in the last paragraph on R. 48. The filing date is at R. 49.

Then, notwithstanding that it had expressly admonished the farmer debtors to file an amended petition and that they had obediently complied, the bankruptcy court by its order dated March 2 and entered on March 5, 1943, ordered, (R. 49 to 50):

> "On this 2 day of March, 1943, it is Ordered that the Debtor, J. S. Garlington, be denied the right to file his amended petition in Bankruptcy, and that such petition, having been presented to the Clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had herein.
>
> The Court finds, among facts, that the Debtor has not heretofore prosecuted his case as required by law and General Order No. 50, Subdivision 4, and that this proceeding was instituted more than three years prior to the date of this order, and more than three years prior to the filing of the Amended Petition."

The statement, "this case having been heretofore dismissed" is wholly gratuitous and unsupported by the facts. From the filing of the original petition for composition or extension under Section 75 (a) to (r) (R. 1 to 20) up to the entry of this order on March 5, 1943, the case was continuously pending in the court.

The further statement that:

> "the Debtor [meaning the farmer debtors, "J. S. Garlington, Jennie Lou Garlington." See their petition and signatures at R. 1 and 2; their amended petition

and signatures at R. 21 and 22; and their petition and signatures at R. 47 and 48] has not prosecuted his case as required by law and by General Order No. 50, Subdivision 4."

is likewise gratuitous. The amended petition at R. 21 to 23 was filed strictly pursuant to the first sentence of Section 75 (s) and also in compliance with the order of October 25, 1939, on the same date on which that order was entered. The order: R. 20 to 21. And General Order 50 (4) does not relate to Section 75 (s) but to the confirmation of a proposal for composition or extension under Section 75 (a) to (r).

The order ignores the pending amended petition (R. 21 to 23) and would transfer to the farmer debtors the onus of the bankruptcy court's failure to observe the mandatory provisions of Section 75 (s) for its administration by the further statement that

"this proceeding was instituted . . . more than three years prior to the filing of the amended petition."

The amended petition which the order refers to is of course the one filed February 1, 1943, pursuant to the court's own order of "January 14, 1943" entered January 23. R. 76, top of page. R. 47 to 49.

In the appellate court it was conceded that the original amended petition at R. 21 to 23 "was timely and a matter of right" citing *John Hancock* v. *Bartels*, 308 U.S. 180. R. 91, bottom of page. Then the appellate opinion proceeds to nullify that right by holding:

R. 91 to 92:

"But the farmer debtors were not automatically entitled to the benefits of Subsection (s). They ought to have brought the amendment to the attention of the

judge, or of the conciliation commissioner who acts as referee in bankruptcy under Subsection (s) (4), so that they might be adjudged bankrupts and the machinery of subsection (s) be put into action. This amended petition did not pray for an appraisal of the property and the setting aside of any to be possessed by the bankrupts under the supervision of the court. It does not appear that such a request was ever made. Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or at the first meeting of creditors. Since there was no adjudication, we presume there was no meeting of creditors. Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Subsection (s) have been substantially enjoyed, except as touching Wasson and his land. General Order 50 (4) does not appear to be involved, but we think the judge was warranted in holding that the amended petition, never having been even prosecuted to an adjudication, was not prosecuted according to law, but was abandoned, and ought not to be revived to enable the petitioners to atempt to have another three years to redeem the Wasson land."

Apropos of the foregoing statements it may be said:

1. Upon the filing of an amended petition under Section 75 (s) the farmer debtor is entitled to its benefits.

John Hancock v. *Bartels*, 1939, 308 U.S. 180.

Gray v. *Union Joint Stock Land Bank*, 1939, 308 U.S. 524;

Morrison v. *Federal Land Bank*, 1939, 308 U.S. 524;
Borchard v. *California Bank*, 1940, 310 U.S. 311;
Wright v. *Union Central*, 1940, 311 U. S. 262;
Wright v. *Logan*, 1942, 315 U.S. 139;
Mangus v. *Miller*, 1942, 315 U.S. 144;
Wragg v. *Federal*, 1943, 317 U.S. 325.

The first part of the foregoing quotation from the appellate court's opinion (at the bottom of R. 91) reads like the opinion of the appellate court which was reversed in *Wright* v. *Logan*. That opinion is here quoted from the last paragraph of the opinion of the appellate court *In re* Wright, CCA 7, 119 Fed. (2d) 354:

> "We are convinced that the privileges conferred upon the debtor by this remedial statute impose upon him a corresponding duty to move expeditiously in order to avail himself of its benefits. Certainly it [Section 75] cannot be construed to permit him to allow his proceeding to lie dormant for years, and then, after expressly promising to surrender possession of the premises involved if he does not pay up within a specified time, invoke its benefits."

The Garlington farmer debtors brought themselves and their property into the bankruptcy court under Section 75 (s) pursuant to the statute:

> "Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt." Section 75 (s), first sentence.

2. They brought their amended petition to the attention of the judge by filing it not only pursuant to the statute just quoted but in compliance with the proviso in the court's order that it was:

> "without prejudice to the right of the debtors to amend their petition and proceed under the Bankruptcy Act, as therein provided." R. 21, top of page.

This amended petition prayed for adjudication and for the benefits of Section 75 (s). R. 21 to 23. And they filed it on October 25, the same day that the order was entered. Date of entry of order: R. 21. Date of filing amended petition: R. 39.

3. Farmer debtors under Section 75 (s) are not required to request appraisal of their property and for exemption, etc., until the first meeting of creditors:

> "Such farmer may, at the same time, or **at the time of the first hearing**, petition the court that all of his property . . . be appraised, and that his . . . exemptions, . . . be set aside to him, and that he be allowed to retain possession, . . . under the terms and conditions set forth in this section." Section 75 (s), second sentence.

The appellate court opinion answers itself by saying:

> "Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or **at the first meeting of creditors.** Since there was no adjudication, we presume there was no meeting of creditors."

4. Regarding the statement that:

> "Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Section (s) have been substantially enjoyed, except as touching Wasson and his land."

Such expression has been directly repudiated by *Wright* v. *Logan*, 1942, 315 U.S. 139. Also by *Borchard* v. *California Bank*, 1940, 310 U.S. 311.

The last part of the expression just quoted from the appellate court below is a paraphrase of the attitude of the lower courts in *Wright* v. *Logan*, as stated by this court in its opinion at page 141, as follows:

> ". . . that although these farmer debtors had filed under other subsections of 75, they had already enjoyed all the benefits to which they would have been entitled under 75 (s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition."

A holding which this court then proceeded to reverse.

5. The statement that:

> "we think the judge was warranted in holding that an amended petition, never having been even prosecuted

> to an adjudication, was not prosecuted according to law, but was abandoned, and ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land."

is likewise contrary to the decisions of this court. As in *Borchard* v. *California,* 1940, 310 U.S. 311, and in *Wright* v. *Logan,* 1942, 315 U.S. 139, the delay was the delay of the bankruptcy court itself and not of the farmer debtors.

6. The crux of the statement just quoted from the lower court's opinion, and of the whole case, is in these words of it which read:

> "ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land."

which words must be read together with the concluding words of the appellate opinion:

> "Appellants are of course entitled by new proceedings in bankruptcy to obtain a discharge from the deficiency judgment which Wasson is said to have obtained against them, as from any other dischargeable debts they may owe. Wasson's debt could be reached by reviving the first filed amended petition, but we think it was within the discretion of the court to refuse to revive a stale proceeding, leaving appellants free to file a new one if they desire. Compare *Wragg* v. *Federal Land Bank,* 317 U.S. 325."

Both the bankruptcy court and the appellate court tempted the farmer debtors to abandon their original amended petition at R. 21 to 23 and rely upon an entirely new, and much later, invocation of Section 75 or of the regular bankruptcy act, referring them to the *Wragg* case.

But the facts in *Wragg* v. *Federal Land Bank*, 1943, 317 U.S. 325, differ from the Garlington case in this:

In the *Wragg* case the right to file an amended petition under Section 75 (s) was denied and the proceeding was dismissed. The farmer debtor attempted to appeal from the order of dismissal but failed. Thereby the first Wragg amended petition was abandoned and the farmer debtor's rights to invoke Section 75 (s) **as of that date lapsed.** Thereafter she filed her petition to reinstate her proceeding, or to file a new amended petition under Section 75 (s). This court held she might proceed anew. **In this Garlington case the proceeding was never dismissed** prior to the order of March 5, 1943, at R. 49, which was appealed and is now before this court for certiorari. **Their invocation of Section 75 (s) at R. 21 to 23 did not lapse.** As has been already stated the statement in the order at R. 49 that "this case, having been heretofore dismissed" is incorrect.

The answer of the farmer debtors to the suggestion that they abandon their amended petition at R. 21 to 23 and rely on a later amended petition is two-fold:

First: They are entitled to have their amended petition at R. 21 to 23 administered by the court according to the statute as in *Borchard* v. *California*, 1940, 310 U.S. 311, and in *Wright* v. *Logan*, 1942, 315 U.S. 139.

Second: They do not desire that their rights involving their creditors and their property as scheduled in their amended petition invoking Section 75 (s) at R. 21 to 23 be destroyed by the court merely because the court failed to recognize their petition and its own statutory duty. As determined by this court in *Wright* v. *Union Central*, 1938. 304, U.S. 502, at page 513:

> "it is the date of filing this request for adjudication as bankrupt which fixes 'the line of cleavage' as to the property."

That "line of cleavage" is the amended petition at R. 21 to 23.

Schedule A at R. 24 to 30 accompanying that amended petition which invoked Section 75 (s) shows many obligations. Schedule B at R. 32 to 34 shows the property involved.

Most of the property and the obligations there scheduled remain unadministered—the obligations due to Wasson and Perkins together with the property involved being among them.

In recapitulation:

The decisions below are contrary to the statute.

They conflict with the decisions of this court.

They depart from the accepted and usual course of judicial proceedings respecting the administration of Section 75.

They deprive the farmer debtors of their right to have their proceeding administered under their amended petition under Section 75 (s) filed October 25, 1939.

Wherefore the petitioners pray that a writ of certiorari be issued to the appellate court below.

Lima, Ohio
March 10, 1944

Respectfully submitted,

ELMER MCCLAIN, Lima Ohio
Counsel for the Petitioners.

D. M. OLDHAM,
Abilene, Texas

THOMAS E. HAYDEN,
Abilene, Texas
Of Counsel.